

FILED

MAR 14 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VIRGILIO FERNANDEZ BALITON,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,*

Respondent.

No. 02-71870

Agency No. A73-218-862

MEMORANDUM**

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2006***

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Virgilio Fernandez Baliton, a native and citizen of the Philippines, petitions

* Alberto R. Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States pursuant to Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

*** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's order denying his application for asylum and withholding of deportation. We dismiss the petition for review.

We lack jurisdiction to review Baliton's contentions that he was denied due process due to ineffective assistance of counsel and that he has new evidence to support his asylum claim because he failed to raise these contentions before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004) (explaining that exhaustion is jurisdictional); *Ontiveros-Lopez v. INS*, 213 F.3d 1121, 1124 (9th Cir. 2000) (holding that petitioner must exhaust administrative remedies by first presenting ineffective assistance of counsel claim to the BIA).

PETITION FOR REVIEW DISMISSED.